

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Joshua Lee Phillips,

Plaintiff,

v.

Major Gregory Washington; Lieutenant
Kimberly Garvin; Lieutenant Tonya Johnson;
Lieutenant Williams; Sergeant Gibson;
Corporal Hanna; Officer Arend; Officer
Crowder; and Office M. Gollach,

Defendants.

C/A No. 1:14-cv-2655-TLW-SVH

ORDER

Plaintiff Joshua Lee Phillips, a prisoner proceeding *pro se*, filed this action alleging violations of his constitutional rights pursuant to 42 U.S.C. § 1983. (ECF No. 1.) Specifically, Plaintiff claims that defendant prison officials failed to prevent an assault by a fellow inmate from whom he was allegedly supposed to be separated. Further, Plaintiff alleges that the officials purposefully placed Plaintiff in the same cell with the inmate who attacked him in retaliation for Plaintiff's submission of offensive and inappropriate staff request forms. (*Id.*)

The matter now comes before this Court for review of the Report and Recommendation (R&R) filed by Magistrate Judge Hodges (ECF No. 43), to whom this case was assigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2), DSC. In the R&R, the Magistrate Judge recommends that the Court dismiss the Complaint with prejudice pursuant to Federal Rule of Civil Procedure 41(b). Objections were due by August 28, 2015, and Plaintiff filed no objection.

This Court is charged with conducting a *de novo* review of any portion of the Magistrate Judge's R&R to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that R&R. 28 U.S.C. § 636. In the absence

of objections to the R&R, this Court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

This Court carefully reviewed the R&R in this case (ECF No. 43) and, noting that there was no objection by Plaintiff, the R&R is hereby **ACCEPTED**.

Additionally, the Court closely reviewed the record in this case, including Defendants' unopposed motion for summary judgment (ECF No. 33) and unanswered motion to have their first set of requests to admit deemed admitted (ECF No. 32).

Defendants move for summary judgment on five grounds, to wit: (1) in their official capacities, Defendants are not "persons" under 42 U.S.C. § 1983, and therefore are immune from this lawsuit; (2) Plaintiff failed to exhaust his administrative remedies prior to filing this lawsuit; (3) Plaintiff cannot establish that Defendants were deliberately indifferent to Plaintiff's rights; (4) Plaintiff cannot establish a claim against Defendants regarding the medical care he received following his altercation; and, (5) in their individual capacities, Defendants are entitled to qualified immunity. (ECF No. 33-1.) Defendants' supporting memorandum sets out the applicable legal authority for each ground, and includes a statement of facts which Plaintiff has not contested. Importantly, Defendants assert that there is no documentary evidence of a separation requirement between Plaintiff and the inmate who assaulted him, and that they had no awareness of any previous problems between the two inmates. (*Id.* at 2-3.) Further, Defendants note that by failing to respond to their requests to admit, Plaintiff has admitted, *inter alia*, that he received no threats of violence from the inmate who assaulted him prior to the assault in question, and that he did not inform Defendants of any threats of violence. (*Id.* at 3-4; ECF No. 32-1.)

As noted above, Plaintiff failed to respond to either motion. He has not contested the evidence in the record, nor has he rebutted the version of facts submitted by Defendants.

After careful consideration of the record and evidence before the Court, and in light of Plaintiff's failure to respond or object to Defendants' motions, the Court finds that summary judgment in favor of Defendants is appropriate. Therefore, for the reasons set forth above, in addition to those articulated by the Magistrate Judge in the R&R in connection with Federal Rule of Civil Procedure 41(b), Plaintiff's Complaint is hereby **DISMISSED** with prejudice.

IT IS SO ORDERED.

s/Terry L. Wooten
Chief United States District Judge

December 15, 2015
Columbia, South Carolina